

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
22385-s40D BY HAROLD BRUSETT)

The Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order as entered by the Hearing Examiner on September 3, 1980 are hereby adopted as the Findings of Fact, Conclusions of Law and Final Order.

FINAL ORDER

1. Subject to the conditions and limitation listed below, Provisional Permit No. 22385-s40D by Harold Brusett is hereby granted to appropriate up to 14.0 acre-feet per annum from an unnamed tributary of the North Fork of Lone Tree Creek in Garfield County, Montana. The water is to be diverted from said unnamed tributary at a point in the NW1/4 SE1/4 SW1/4 of Section 13, Township 19 North, Range 34 East, M.P.M., in Garfield County, Montana. The water is to be diverted from said unnamed tributary by means of a diversion dike system and used for new flood irrigation on a total of 7 acres, more or less, in the SW1/4 of Section 13, Township 19 North, Range 34 East, M.P.M., in Garfield County, Montana. The water is to be diverted from March 1 to June 30, inclusive, of each year.

2. Provisional Permit No. 22385-s40D is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana law.

3. The issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing

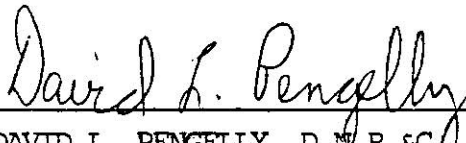
CASE # 22385

1 the Provisional Permit in any way acknowlege liability for damage
2 caused by the Permittee's exercise of the Provisional Permit.

3 NOTICE

4 The Hearing Examiner's Final Order may be appealed in accordance
5 with the Montana Administrative Procedures Act by filing a petition in
6 the appropriate court within thirty (30) days after service of the Final
7 Order.

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9 DATED this 18th day of September, 1980.

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12 _____
13 DAVID L. PENGELLY, D.N.R.&C
14 HEARING EXAMINER
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CASE # 22385

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
22385-s40D BY HAROLD BRUSETT)

Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, after due notice, a hearing was held on May 15, 1980, at Jordon, Montana, for the purpose of hearing objections to Application for Beneficial Water Use Permit No. 22385-s40D, David Pengelly, Hearing Examiner, presiding. The hearing in the above matter was held in conjunction with the hearing in the Matter of Application for Beneficial Water Use Permit No. 26415-s400.

The Applicant, Harold Brusett, appeared at the hearing and presented testimony of support of the Application. Mr. Brusett was not represented by legal counsel. No exhibits were introduced in support of the Application.

One objector, Mrs. Bertha Roufley, attended the hearing and presented testimony. Mrs. Roufley was not represented by legal counsel. One exhibit was introduced on behalf of the Objector, to wit:

Objector's Exhibit:

O-1 Nine photographs depicting spring runoff on Objector's property taken April 11, 1979.

The Objector's exhibit was introduced into the record with no objections.

Montana Department of Natural Resources and Conservation personnel present at the hearing were Arlin Krogstad, Hearing Representative; Larry Brown, Hydrologist; Vivian Lighthizer, Glasgow Water Rights Bureau Field Office Manager; and Vicki Woodrow, Hearings Reporter. The Department

CASE # 22385

1 was not represented by legal counsel. No exhibits were introduced by
2 the Department.

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4 SUMMARY OF RECORD

5 1. On April 16, 1979, the Department received an Application for
6 Beneficial Water Use Permit No. 22385-s40D by Harold Brusett to appropriate
7 up to 14 acre-feet per annum from an unnamed tributary of the North Fork
8 of Lone Tree Creek in Garfield County, Montana. The water is to be
9 diverted from the said unnamed tributary at a point in the NW1/4 SE1/4
10 SW1/4 of Section 13, Township 19 North, Range 34 East, M.P.M., in Garfield
11 County, Montana. The water is to be used for new flood irrigation on a
12 total of 7 acres, more or less, in the SW1/4 of Section 13, Township 19
13 North, Range 34 East, M.P.M., in Garfield County, Montana. The water is
14 to be diverted by means of dikes from March 1 to July 31, inclusive, of
15 each year.

16 2. On June 14, 21, and 28, 1979, the Department caused to be duly
17 published in the Jordan Tribune, Jordan, Montana, notice of Application
18 for Beneficial Water Use Permit No. 22385-s40D.

19 3. On July 18, 1979, the Department received an objection to the
20 above Application from Mrs. Bertha E. Roufley.

21 PROPOSED FINDINGS OF FACT

22 Based on the transcript of the hearing and the information contained
23 in the Department's file on this matter, it is found:

24 1. That the intended period of diversion is March 1 to June 30,
25 inclusive, of each year.

26 2. That in years when there is runoff, there are unappropriated
27 waters in the source of supply that can be put to the use proposed by
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CASE # 22385

1 the Applicant, in the amount the Applicant seeks to appropriate, and
2 throughout the period during which the Applicant seeks to appropriate
3 the amount requested is available.

4 3. That the Objector has a valid existing water right for the
5 irrigation of approximately 40 acres.

6 4. That when water is available for appropriation by the Applicant,
7 there is sufficient water available to satisfy the needs of the Objector
8 also.

9 5. That the proposed means of diversion and construction are
10 adequate.

11 6. That the proposed use of water is a beneficial use.

12 7. That there are no planned uses or developments for which permits
13 have been issued or for which water has been reserved that may be adversely
14 affected by this proposed use.

15 PROPOSED CONCLUSIONS OF LAW

16 1. Section 85-2-311, MCA, 1979, states that, "The Department shall
17 issue a permit if:
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19 1. there are unappropriated waters in the source of supply:

20 a. at times when the water can be put to the use
21 proposed by the applicant;

22 b. in the amount the applicant seeks to appropriate; and

23 c. throughout the period during which the applicant
24 seeks to appropriate, the amount requested is
25 available;

26 2. the rights of a prior appropriator will not be adversely
27 affected;
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CASE # 22385

3. the proposed means of diversion or construction are adequate;
4. the proposed use of water is a beneficial use;
5. the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; . . ."

2. It is concluded that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicants seeks to appropriate; and throughout the period during which the Applicants seeks to appropriate, the amount requested is available.

3. It is concluded that the rights of prior appropriators will not be adversely affected by the granting of this permit.

4. It is concluded that the proposed use of water is a beneficial use.

5. It is concluded that the proposed means of diversion or construction are adequate.

6. It is concluded that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

7. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those rights herein applied for, to the extent necessary to reach a conclusion herein.

Based on the Proposed Findings of Fact and Proposed Conclusions of Law, the following Proposed Order is hereby made:

PROPOSED ORDER

1. Subject to the conditions and limitation listed below, Provisional

CASE # 22385

Permit No. 22385-s40D by Harold Brusett is hereby granted to appropriate up to 14.0 acre-feet per annum from an unnamed tributary of the North Fork of Lone Tree Creek in Garfield County, Montana. The water is to be diverted from said unnamed tributary at a point in the NW1/4 SE1/4 SW1/4 of Section 13, Township 19 North, Range 34 East, M.P.M., in Garfield County, Montana. The water is to be diverted from said unnamed tributary by means of a diversion dike system and used for new flood irrigation on a total of 7 acres, more or less, in the SW1/4 of Section 13, Township 19 North, Range 34 East, M.P.M., in Garfield County, Montana. The water is to be diverted from March 1 to June 30, inclusive, of each year.

2. Provisional Permit No. 22385-s40D is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana law.

3. The issuance of this Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of the Provisional Permit.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the service of this Proposed Order and shall end ten (10) days thereafter. No extensions of time for comment will be granted.

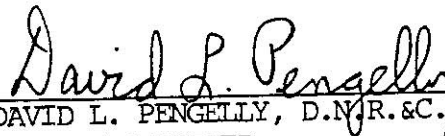
The Final Order in this matter will be sent to all parties by certified mail.

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate

CASE # 22385

1 court within thirty (30) days after service of the Final Order.
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3 DATED this 3rd day of September, 1980.
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6 DAVID L. PENGELLY, D.N.R.&C.
7 HEARING EXAMINER
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CASE # 22385